



Comptroller General
of the United States

333267

Washington, D.C. 20548

Decision

Matter of: Sunrise International Group, Inc.; Eagle III
Knoxville, Inc.

File: B-252735; B-252735.2

Date: July 27, 1993

Ray E. Baker for Sunrise International Group, Inc. and
Robert A. Hrabovsky for Eagle III Knoxville, Inc., the
protesters.

Major Bobby G. Henry, Jr., and Captain Elizabeth DiVecchio
Berrigan, Department of the Army, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Bid submitted in the name of Budget Inns of America (BIA), a
Tennessee corporation, cannot be accepted where there is no
such corporation and there is no contemporaneous, publicly
available evidence in the record that supports the claim
that BIA was the trade or assumed name of a Tennessee
Corporation, T.B.F. Enterprises, Inc., which was not men-
tioned in the bid, although T.B.F. Enterprises was owned by
the individuals who signed the bid and was located at the
same address as BIA.

DECISION

Sunrise International Group, Inc. and Eagle III Knoxville,
Inc. protest the award under invitation for bids (IFB)
No. DAKF23-93-B-0006, issued by the Department of the Army,
for meals and lodging service. Sunrise and Eagle III both
contend that the award based on the low bid submitted in the
name of Budget Inns of America (BIA) was improper because
BIA is not a legal entity. Sunrise also protests that Eagle
III's bid should be rejected because its rooms are not in
compliance with room size specifications.

We sustain the protests against award to BIA.

On December 17, 1992, the Army issued the IFB to obtain a
contractor to provide lodging, meal service, and transpor-
tation for the Military Entrance Processing Station in
Knoxville, Tennessee. The contract is to be for a 1-year

base period and 2 option years. On January 27, 1993, eight bids were received in response to the IFB. The low bid was from BIA, the second low bid from Eagle III, and the third low bid from Sunrise. The Army made award to BIA as the low bidder.

Sunrise¹ and Eagle III protest that BIA's bid was nonresponsive because BIA was not properly incorporated in Tennessee, as certified in its bid, and is thus not an entity legally bound to the IFB. Although the Army confirms that BIA is not incorporated in Tennessee, it asserts that BIA is an assumed or trade name for the actual bidder, T.B.F. Enterprises, Inc., an entity properly incorporated in Tennessee, and that T.B.F. Enterprises is bound to perform the IFB work.

The determination of what legal entity is actually bound to the bid is a matter of responsiveness. Haz-Tad, Inc. et al., 68 Comp. Gen. 92 (1988), 88-2 CPD ¶ 486. The test for responsiveness is whether the bid as submitted represents an unequivocal offer to provide the requested supplies or services at a firm, fixed price. Uncertainty as to the identity of the bidder is a circumstance that renders a bid nonresponsive, since the bidder potentially could avoid the

¹The Army maintains that Sunrise is not an interested party eligible to protest the award because it is the third low bidder. Under our Bid Protest Regulations, an interested party is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a) (1993). A protester is not an interested party where it would not be in line for award were its protest to be sustained. Koehring Cranes & Excavators; Komatsu Dresser Co., B-245731.2; B-245731.3, Nov. 23, 1992, 92-2 CPD ¶ 362.

Sunrise has protested that Eagle III's bid is "nonresponsive" to the IFB's minimum room size requirements. Since Eagle III's bid did not take any exception to these requirements, it is responsive; Sunrise's protest that Eagle III's facility does not meet the room size requirements actually concerns Eagle III's capability of meeting the IFB requirements, that is, its responsibility. See King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177. The Army has not investigated Eagle III's facility or determined that firm to be responsible and thus eligible for award. Since Sunrise's challenge of Eagle III's responsibility has not yet been determined by the agency, we cannot conclude that Sunrise would not be in line for award if its protest of the BIA award is sustained; it therefore is an interested party to protest the BIA award.

obligation to perform the contract. See Cline Enters., Inc., B-252407, June 24, 1993, 93-1 CPD ¶ 492. In any case, a bid from a nonexistent entity cannot be accepted since upon acceptance of the bid no one would be bound to perform the IFB work. Martin Co., B-178540, May 8, 1974, 74-1 CPD ¶ 234; see Rocky Mountain Log Homes, B-243292, July 10, 1991, 91-2 CPD ¶ 41. Further, an award to an entity other than that named in the bid constitutes an improper substitution of bidders. Id.; Syllor, Inc. and Ease Chem., B-234723; B-234724, June 6, 1989, 89-1 CPD ¶ 530.

Here, the record shows that BIA's bid was signed by Ms. Flora D. Long as secretary of the company and contained a corporate certificate--as evidence of the authority of Ms. Long to bind BIA--signed by Mr. Gary Long as president of the corporation named in the bid. No corporate seal is apparent in the bid. In the bid, the address of BIA was listed as 6101 Kingston Pike, Knoxville, Tennessee, and BIA is identified as a corporation incorporated in Tennessee. A tax identification number (TIN) is included in the bid, but there is no evidence of what entity holds this number. T.B.F. Enterprises is not mentioned anywhere in the bid.

Although BIA certified that it was incorporated in Tennessee, the Secretary of State's office for Tennessee confirms the protesters' allegation that BIA is not incorporated in Tennessee. Indeed, the record shows that a corporate charter in the name of BIA, but located in Memphis, was revoked by the state of Tennessee. Thus, BIA is not a Tennessee corporation.

The Secretary of State's records show that the address listed in BIA's bid is the same corporate address for T.B.F. Enterprises, and that Mr. and Ms. Long respectively are listed as president and secretary. The Army's essential theory in accepting BIA's bid is that BIA is merely an assumed or trade name of T.B.F. Enterprises, which is actually bound to perform the contract awarded under the IFB.

Where the bidder has allegedly bid under a trade or assumed name, the bid can only be accepted if there is evidence, existing and publicly available at the time of bid opening, that establishes with reasonable certainty the actual bidder's use of the trade name. See Coonrod & Assocs., 67 Comp. Gen. 117 (1987), 87-2 CPD ¶ 549; Sunrise Int'l Group, Inc., B-251956, Feb. 8, 1993, 93-1 CPD ¶ 114; Ebsco Interiors, B-205526, Aug. 16, 1982, 82-2 CPD ¶ 130.

Here, the record contains no contemporaneous, publicly available evidence that reasonably establishes that BIA was a trade or assumed name for T.B.F. Enterprises. The Secretary of State's records show that T.B.F. Enterprises did not list any assumed or trade names, and BIA's bid does

not reference T.B.F. Enterprises. Also, the record contains evidence that Mr. and Ms. Long control other corporations (for example, the bank account of another corporation was referenced in Ms. Long's response to the agency's request for information showing BIA's financial capability), thus indicating the possibility that one of these other corporations could be asserted to be the real party in interest. Accordingly, we do not see how the contracting officer could reasonably find, on the basis of any evidence extant as of bid opening, that the bid was actually submitted by T.B.F. Enterprises using BIA as a trade or assumed name. In effect, by defending this award without confirming with existing documentation showing that BIA is T.B.F. Enterprises's and no other entity's assumed or trade name, and asserting that T.B.F. Enterprises is bound to BIA's bid, the Army is improperly attempting to substitute bidders. Syllor, Inc. and Ease Chem., supra.

We recommend that the Army terminate the contract award to BIA and make award to Eagle III--which has certified itself to be a small business concern--if Eagle III is determined to be responsible. If Eagle III is determined not to be responsible and is not issued a Certificate of Competency by the Small Business Administration, award should be made to Sunrise if the firm is otherwise eligible. The protesters are entitled to recover their costs of filing and pursuing the protests, including reasonable attorneys' fees. 4 C.F.R. § 21.6(f)(1). In accordance with 4 C.F.R. § 21.6(f), the protesters' certified claims for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protests are sustained.

for Milton J. Austin
Comptroller General
of the United States